

Exhibit 222

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Page 1

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 Master File No. 1:17-cv-00916-RA-BCM

5 - - - - -x

6 In re:

GLOBAL BROKERAGE, INC.

7 F/K/A FXCM, INC.

Securities Litigation

8 - - - - -x

9 Virtual Zoom Deposition

10
November 20, 2020

11 9:30 a.m.

12
13 CONFIDENTIAL VIDEOTAPED VIRTUAL
14 DEPOSITION of PATRICIA MUCHINSKY, in the
15 above-entitled action, held at the above
16 time and place, taken before Jeremy
17 Richman, a Shorthand Reporter and Notary
18 Public of the State of New York, pursuant
19 to the Federal Rules of Civil Procedure,
20 and stipulations between Counsel.

21
22 * * *

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<p style="text-align: right;">Page 102</p> <p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 invoice route with Goldman, I want to</p> <p>3 say, Goldman Sachs, at one point. We</p> <p>4 did try the invoice route, but it</p> <p>5 became onerous to do that every month,</p> <p>6 when -- and then we moved to a</p> <p>7 different arrangement with Goldman.</p> <p>8 But that was the only instance. This</p> <p>9 instance and maybe the Goldman instance</p> <p>10 were the only times I was involved, and</p> <p>11 it was more of an involvement from, can</p> <p>12 you verify the volume figures, than</p> <p>13 anything else.</p> <p>14 Q. Understood. Would -- the</p> <p>15 invoices you referenced to Goldman, do</p> <p>16 you remember what time period that was?</p> <p>17 A. I don't. And I think it was</p> <p>18 only one or two invoices.</p> <p>19 Q. Do you recall what the basis</p> <p>20 for those invoices was?</p> <p>21 A. We had a -- it was a similar</p> <p>22 type of rebate structure, I want to</p> <p>23 say, that we had in place. I don't</p> <p>24 remember the direction of the invoice</p> <p>25 saying -- it was a while ago, but</p>	<p style="text-align: right;">Page 104</p> <p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 A. It was similar in the -- I</p> <p>3 don't remember the details, if it was a</p> <p>4 straight up dollar per million. I</p> <p>5 believe it was, but I don't know if it</p> <p>6 was. I don't remember exactly what the</p> <p>7 fee was with Goldman.</p> <p>8 Q. Do you remember if it was</p> <p>9 based on the volume of retail trading</p> <p>10 that Goldman transacted --</p> <p>11 A. Yes.</p> <p>12 Q. -- with FXCM?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall, on a relative</p> <p>15 basis, the amount of volume that</p> <p>16 Goldman transacted with FXCM compared</p> <p>17 to EFFEX?</p> <p>18 A. At one point it was probably</p> <p>19 similar.</p> <p>20 Q. When you say, at one point,</p> <p>21 what time period, generally, are we</p> <p>22 talking about?</p> <p>23 A. Maybe a couple years before</p> <p>24 this.</p> <p>25 Q. This, meaning 2010?</p>
<p style="text-align: right;">Page 103</p> <p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 rather than having the invoices going</p> <p>3 back and forth, we just changed to</p> <p>4 markups instead.</p> <p>5 Q. So and so on rebates.</p> <p>6 A. To what we had with EFFEX.</p> <p>7 Q. And what was the basis --</p> <p>8 sorry, were you done?</p> <p>9 A. No, go ahead.</p> <p>10 Q. What was the basis for the</p> <p>11 EFFEX rebates?</p> <p>12 A. It was just a dollar per</p> <p>13 million.</p> <p>14 Q. Dollar per million of what?</p> <p>15 A. Volume traded.</p> <p>16 Q. So a -- the EFFEX invoices</p> <p>17 were a rate of, certain rate of dollars</p> <p>18 per million based on the volume that</p> <p>19 EFFEX traded. Is that with FXCM retail</p> <p>20 customers?</p> <p>21 A. Yes.</p> <p>22 Q. Was that the same for</p> <p>23 Goldman?</p> <p>24 A. Similar.</p> <p>25 Q. How was it different?</p>	<p style="text-align: right;">Page 105</p> <p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 A. Yes.</p> <p>3 Q. Between 2010 and 2014, do you</p> <p>4 know if -- let me break this up.</p> <p>5 Between 2010 and 2014, do you know if</p> <p>6 Goldman continued to make payments on</p> <p>7 the volume of FXCM retail trading?</p> <p>8 A. No. We'd only -- the</p> <p>9 invoicing arrangement was very</p> <p>10 short-lived with Goldman. It might</p> <p>11 have only been a month or two.</p> <p>12 Q. Were you aware of the</p> <p>13 payments from Goldman, whether or not</p> <p>14 it was through invoices, continued in</p> <p>15 the 2010 through 2014 time period?</p> <p>16 A. They don't, they didn't.</p> <p>17 Q. Are you aware of any other</p> <p>18 liquidity provider who made payments to</p> <p>19 FXCM based on the volume of FXCM retail</p> <p>20 trading during the 2010 to 2014 time</p> <p>21 period?</p> <p>22 A. Not through invoices.</p> <p>23 Q. Were there liquidity</p> <p>24 providers who made those payments aside</p> <p>25 from the invoices?</p>

27 (Pages 102 - 105)

CONFIDENTIAL

<p style="text-align: right;">Page 106</p> <p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 A. Well, it wasn't, like, a</p> <p>3 payment as such, it was more like they</p> <p>4 were given a lower markup.</p> <p>5 Q. Do you remember who those</p> <p>6 liquidity providers were?</p> <p>7 A. There were a number.</p> <p>8 Q. Do you remember any</p> <p>9 specifically?</p> <p>10 A. Yes. Dresdner Bank, Deutsche</p> <p>11 Bank, Goldman Sachs, Morgan Stanley.</p> <p>12 Q. Did EFFEX also receive a</p> <p>13 lower markup during the 2010 to 2014</p> <p>14 time period?</p> <p>15 A. Maybe.</p> <p>16 Q. Aside from any arrangement</p> <p>17 similar to the other banks that you</p> <p>18 referenced, do you recall if EFFEX's</p> <p>19 markup was different, higher, lower,</p> <p>20 than other liquidity providers in that</p> <p>21 time period?</p> <p>22 A. We had a number of providers</p> <p>23 who were preferenced through the</p> <p>24 markups in our liquidity pool. It was</p> <p>25 a standard offering that we made to</p>	<p style="text-align: right;">Page 108</p> <p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 A. I'm sure at one point they</p> <p>3 did, but it wasn't across the board.</p> <p>4 Q. Across the board meaning</p> <p>5 across different currency pairs?</p> <p>6 A. Yes, because we had some</p> <p>7 providers that would show us better</p> <p>8 pricing, so they had a lower markup in,</p> <p>9 say, Eurodollar, right, some that would</p> <p>10 show us a better pricing in dollar CAD,</p> <p>11 so they would be preferenced, and so on</p> <p>12 and so forth. Some in -- some that</p> <p>13 showed us deeper liquidity also might</p> <p>14 have a more favorable markup, because</p> <p>15 they showed us more liquidity.</p> <p>16 Q. Was this new markup reference</p> <p>17 separate or independent from a priority</p> <p>18 ranking of liquidity providers that</p> <p>19 applied when liquidity providers would</p> <p>20 tie or offer the same price?</p> <p>21 MS. COREY: Objection to</p> <p>22 form.</p> <p>23 A. It would be independent.</p> <p>24 Q. Okay. And we'll talk about</p> <p>25 the priority more later, okay? Going</p>
<p style="text-align: right;">Page 107</p> <p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 every single liquidity provider on the</p> <p>3 street in order to get more competitive</p> <p>4 pricing.</p> <p>5 Q. So offering a lower markup</p> <p>6 for a liquidity provider was an</p> <p>7 incentive; do I understand you</p> <p>8 correctly?</p> <p>9 A. It was an incentive in the</p> <p>10 sense -- yes, it was. It was an</p> <p>11 incentive, and it cost FXCM money, if</p> <p>12 you want to think of it that way, in</p> <p>13 the sense that we wouldn't make -- if</p> <p>14 that provider received a lower markup</p> <p>15 in exchange for showing tighter prices,</p> <p>16 they would be more likely to be at the</p> <p>17 top of book, meaning they would see</p> <p>18 more flow. They would see, they would</p> <p>19 be preferenced in the liquidity stack.</p> <p>20 And it was something that was offered</p> <p>21 to every provider.</p> <p>22 Q. Do you recall if EFFEX</p> <p>23 specifically had lower markups than</p> <p>24 other liquidity providers in the 2010</p> <p>25 to 2014 time period?</p>	<p style="text-align: right;">Page 109</p> <p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 back to the document, the email chain</p> <p>3 here, Exhibit 6. Who else was usually</p> <p>4 involved in preparing or sending</p> <p>5 invoices to EFFEX?</p> <p>6 A. Josh or someone on his team.</p> <p>7 Q. Josh Rosenfeld?</p> <p>8 A. Yes.</p> <p>9 Q. Anyone else in particular</p> <p>10 that you recall working with?</p> <p>11 A. I recall this being a</p> <p>12 one-off, potentially. I don't remember</p> <p>13 doing this on a regular basis.</p> <p>14 Q. And if I understood you</p> <p>15 correctly, you previously testified</p> <p>16 that you don't recall FXCM sending</p> <p>17 these type of invoices to any other</p> <p>18 liquidity providers in the 2010 to 2014</p> <p>19 time period?</p> <p>20 A. Don't recall, no.</p> <p>21 Q. In this email chain Mr.</p> <p>22 Rosenfeld represents FXCM Holdings. Is</p> <p>23 that the entity we talked about</p> <p>24 earlier, the parent company of FXCM</p> <p>25 U.S.?</p>

28 (Pages 106 - 109)

CONFIDENTIAL

<p style="text-align: right;">Page 158</p> <p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 providers who are eating away the top</p> <p>3 of book with aggressive skewed pricing,</p> <p>4 what do you mean there?</p> <p>5 A. With aggressive skewed</p> <p>6 pricing, yeah, one or more providers,</p> <p>7 right, in this case, we had John and we</p> <p>8 had BNP, who were aggressively showing</p> <p>9 skewed pricing and taking the</p> <p>10 top-of-book flow.</p> <p>11 Q. What do you mean by, showing</p> <p>12 aggressive skewed pricing?</p> <p>13 A. So when you skew a price, it</p> <p>14 means you have a specific interest to</p> <p>15 buy or sell one way or the other. So</p> <p>16 by skewing your price, you're</p> <p>17 essentially showing your interest by</p> <p>18 showing a really aggressive price,</p> <p>19 either on the bid or on the offer.</p> <p>20 Q. And -- sorry, go ahead.</p> <p>21 A. That's typically what John</p> <p>22 and BNP were doing, right, was showing</p> <p>23 aggressive pricing.</p> <p>24 Q. And was that the principal</p> <p>25 reason that EFFEX was capturing the --</p>	<p style="text-align: right;">Page 160</p> <p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 A. Yes.</p> <p>3 Q. Thank you. If you look up to</p> <p>4 Mr. Niv's email, where he says, Lump</p> <p>5 all funds like Sun, Lucid and EFFEX</p> <p>6 into one bucket, and tell the banks</p> <p>7 it's three funds. We share the pie,</p> <p>8 don't give specifics.</p> <p>9 Did you understand Mr. Niv to</p> <p>10 mean that Sun and EFFEX were similar</p> <p>11 funds?</p> <p>12 MS. COREY: Objection to</p> <p>13 form.</p> <p>14 THE WITNESS: Sorry, Chelsea.</p> <p>15 MS. COREY: Go ahead.</p> <p>16 A. I read this as he was telling</p> <p>17 me not to change anything, not to</p> <p>18 exclude anyone.</p> <p>19 Q. And did you consider Sun and</p> <p>20 EFFEX to be similar types of funds?</p> <p>21 A. They were similar in their</p> <p>22 trading style, yes, and they were</p> <p>23 high-frequency.</p> <p>24 Q. Were there any other</p> <p>25 similarities or commonalities other</p>
<p style="text-align: right;">Page 159</p> <p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 a predominant share of EFFEX's retail</p> <p>3 overflow?</p> <p>4 MS. COREY: Objection to</p> <p>5 form.</p> <p>6 A. I guess. I don't know how</p> <p>7 his algo -- or how he was pricing.</p> <p>8 Q. Was -- so in this discussion</p> <p>9 between you, Mr. Niv and Mr. Ahdout of</p> <p>10 how to present share figures to</p> <p>11 liquidity providers, is this something</p> <p>12 that was a one-time conversation that</p> <p>13 was resolved, or is this an ongoing</p> <p>14 discussion that you would have on</p> <p>15 multiple occasions?</p> <p>16 A. I think it was ongoing.</p> <p>17 Q. I'm sorry, I didn't hear, you</p> <p>18 think it was ongoing?</p> <p>19 A. I think it was ongoing, yes.</p> <p>20 Q. Before you said, just to</p> <p>21 clarify in your previous answer, you</p> <p>22 were referring to Mr. Dittami's algo.</p> <p>23 Is that algorithm?</p> <p>24 A. Yes.</p> <p>25 Q. EFFEX's trading algorithm?</p>	<p style="text-align: right;">Page 161</p> <p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 than being high-frequency trading --</p> <p>3 traders, excuse me?</p> <p>4 A. Well, by virtue of being</p> <p>5 non-banks, they would be.</p> <p>6 Q. Did Sun have a relationship</p> <p>7 at FXCM that was different from most</p> <p>8 other liquidity providers?</p> <p>9 A. No.</p> <p>10 Q. Any of these three funds,</p> <p>11 Sun, Lucid or EFFEX?</p> <p>12 MS. COREY: Objection to</p> <p>13 form.</p> <p>14 Q. Let me clarify. Did any of</p> <p>15 those three funds; Sun, Lucid or EFFEX;</p> <p>16 have a relationship with FXCM that</p> <p>17 differed from FXCM's relationship with</p> <p>18 most other liquidity providers?</p> <p>19 MS. COREY: Objection to</p> <p>20 form.</p> <p>21 A. Well, Lucid eventually became</p> <p>22 owned by FXCM.</p> <p>23 Q. And was there a similar</p> <p>24 connection between FXCM and Sun?</p> <p>25 A. No.</p>

CONFIDENTIAL

<p style="text-align: right;">Page 162</p> <p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 Q. What about EFFEX?</p> <p>3 A. Different than Lucid, yes, as</p> <p>4 far as I knew.</p> <p>5 Q. In your experience, did FXCM</p> <p>6 interact with these three funds in a</p> <p>7 different manner than they did with,</p> <p>8 say, banks or other types of liquidity</p> <p>9 providers?</p> <p>10 MS. COREY: Objection to</p> <p>11 form.</p> <p>12 A. Excluding Sun, I think they</p> <p>13 probably interacted quite differently</p> <p>14 with Lucid and EFFEX.</p> <p>15 Q. And how so? Starting with</p> <p>16 Lucid.</p> <p>17 A. I don't remember when the</p> <p>18 Lucid FXCM deal took place, but</p> <p>19 obviously they were owned by FXCM.</p> <p>20 Q. And how did FXCM interact</p> <p>21 differently with EFFEX, compared to</p> <p>22 other types of liquidity providers?</p> <p>23 A. It was just, it was a closer</p> <p>24 relationship.</p> <p>25 Q. In what ways?</p>	<p style="text-align: right;">Page 164</p> <p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 A. I don't understand.</p> <p>3 Q. I can rephrase. So at the</p> <p>4 time of this email, the discussion that</p> <p>5 you're having with Mr. Niv and</p> <p>6 Mr. Ahdout, if I understood your prior</p> <p>7 testimony correctly, was that the</p> <p>8 result of this conversation was to not</p> <p>9 disclose to other liquidity providers</p> <p>10 what EFFEX's market share was at this</p> <p>11 time; is that correct?</p> <p>12 A. No. He isn't telling me to</p> <p>13 exclude them at all.</p> <p>14 Q. Sorry, not to -- whether or</p> <p>15 not to exclude them; whether or not to</p> <p>16 share EFFEX's market share or a</p> <p>17 different calculation, as opposed to</p> <p>18 the liquidity provider's share just</p> <p>19 based on the total volume.</p> <p>20 A. That was a nonissue, because</p> <p>21 we never shared it, anyway. We never</p> <p>22 shared EFFEX's market share with anyone</p> <p>23 else.</p> <p>24 Q. Okay, so then I guess the</p> <p>25 question that I'm getting at is that</p>
<p style="text-align: right;">Page 163</p> <p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 A. You know, John just had, you</p> <p>3 know, John had been an employee at one</p> <p>4 point. He had a good relationship with</p> <p>5 the partners. So from that</p> <p>6 perspective, it was closer than other</p> <p>7 liquidity providers.</p> <p>8 Q. Were the rebate payments that</p> <p>9 EFFEX made to FXCM a factor in that</p> <p>10 relationship between EFFEX and FXCM?</p> <p>11 A. I wouldn't know about that.</p> <p>12 MS. COREY: Objection to</p> <p>13 form.</p> <p>14 Q. Was there a time when Mr. Niv</p> <p>15 or Mr. Ahdout instructed you</p> <p>16 differently in terms of disclosing</p> <p>17 EFFEX's market share to other liquidity</p> <p>18 providers? Let me back up first.</p> <p>19 So you said here, It was</p> <p>20 determined not to share EFFEX's market</p> <p>21 share with other liquidity providers;</p> <p>22 is that correct? Here, meaning at the</p> <p>23 time of this email.</p> <p>24 MS. COREY: Objection to</p> <p>25 form. Sorry.</p>	<p style="text-align: right;">Page 165</p> <p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 here, the decision was not to share</p> <p>3 that information, and if I understand</p> <p>4 correctly, you're saying that you had</p> <p>5 similar conversations at other times,</p> <p>6 but you didn't, at another time,</p> <p>7 disclose EFFEX's market share to other</p> <p>8 liquidity providers?</p> <p>9 MS. COREY: Objection to</p> <p>10 form.</p> <p>11 A. No. EFFEX's market share was</p> <p>12 never shared, and he's not telling me</p> <p>13 to exclude them from the calculation</p> <p>14 here.</p> <p>15 Q. Was there a time where</p> <p>16 Mr. Niv and Mr. Ahdout did instruct you</p> <p>17 to exclude EFFEX from market share</p> <p>18 calculations?</p> <p>19 A. I don't remember. It may</p> <p>20 have happened later on, but at this</p> <p>21 point in time I'm asking for direction,</p> <p>22 and that's not the direction I'm being</p> <p>23 given.</p> <p>24 Q. I'm going to introduce</p> <p>25 another exhibit.</p>

CONFIDENTIAL

<p style="text-align: right;">Page 178</p> <p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 A. Not that I recall.</p> <p>3 Q. And what did you understand</p> <p>4 Mr. Niv to mean by rebates? Rebate,</p> <p>5 sorry.</p> <p>6 A. Rebate would be similar to</p> <p>7 what we saw on that invoice, which</p> <p>8 would be a dollar per million.</p> <p>9 Q. In payments for order flow</p> <p>10 that you pointed out earlier?</p> <p>11 A. Correct.</p> <p>12 Q. Do you know why those</p> <p>13 payments were referred to as rebates?</p> <p>14 A. I don't know, I don't know</p> <p>15 why Drew called them rebates.</p> <p>16 Q. Were you aware of Mr. Niv or</p> <p>17 others at FXCM changing the rate or</p> <p>18 amount of rebates that they would</p> <p>19 request from EFFEX?</p> <p>20 A. I think at one point there</p> <p>21 was a reduction. I seem to remember</p> <p>22 that.</p> <p>23 Q. Do you recall being -- were</p> <p>24 you involved in any conversations</p> <p>25 concerning changing the rate of</p>	<p style="text-align: right;">Page 180</p> <p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 (Recess.)</p> <p>3 THE VIDEOGRAPHER: We are</p> <p>4 back on the record, the time is</p> <p>5 2:23, this is the beginning of</p> <p>6 media file 5.</p> <p>7 Q. Welcome back, Ms. Muchinsky.</p> <p>8 I've introduced Exhibit 13. Do you</p> <p>9 have that up in front of you?</p> <p>10 (Exhibit 13, marked for</p> <p>11 identification, Bates stamped</p> <p>12 GLBR_00217365.)</p> <p>13 A. I do.</p> <p>14 Q. For the record, Exhibit 13 is</p> <p>15 Bates stamped GLBR_217365. Ms.</p> <p>16 Muchinsky, does this appear to be a</p> <p>17 transcript for an instant messaging</p> <p>18 conversation between Mr. Dittami and</p> <p>19 yourself?</p> <p>20 A. Yes, it is.</p> <p>21 Q. And this is from</p> <p>22 October 2012, right, yes?</p> <p>23 A. Yes.</p> <p>24 Q. Do you recall what platform</p> <p>25 you used to instant message with</p>
<p style="text-align: right;">Page 179</p> <p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 payment, the rate per million of those</p> <p>3 payments?</p> <p>4 A. No, I wouldn't have been in</p> <p>5 the conversation. I would have been</p> <p>6 told after the fact.</p> <p>7 Q. We're done with that</p> <p>8 document. I'll be introducing another.</p> <p>9 This will be Exhibit 13. Let me know</p> <p>10 when you see it.</p> <p>11 A. Can I have just one minute,</p> <p>12 please? Sorry, I just need to step</p> <p>13 away.</p> <p>14 Q. No problem.</p> <p>15 THE VIDEOGRAPHER: Can we go</p> <p>16 off the record for a media change?</p> <p>17 MR. BAKER: Want to take</p> <p>18 five, 10 minutes now for a break?</p> <p>19 THE WITNESS: That would be</p> <p>20 great, thank you.</p> <p>21 MS. COREY: Let's do that.</p> <p>22 THE VIDEOGRAPHER: Thank you.</p> <p>23 The time is 2:16, we're going off</p> <p>24 the record. This is the end of</p> <p>25 media file four.</p>	<p style="text-align: right;">Page 181</p> <p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 Mr. Dittami in 2012?</p> <p>3 A. I don't recall.</p> <p>4 Q. Would this have been FXCM's</p> <p>5 instant messaging platform?</p> <p>6 A. Yes. I -- yes.</p> <p>7 Q. And it certainly appears</p> <p>8 Mr. Dittami had access to that</p> <p>9 platform, as there's a conversation</p> <p>10 here; is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. And Mr. Dittami, as indicated</p> <p>13 by his email, John@EFFEXcapital.com, I</p> <p>14 think before you mentioned if he had an</p> <p>15 FXCM email, he could use the instant</p> <p>16 messaging service, but it appears he</p> <p>17 was using his EFFEX email; is that</p> <p>18 accurate?</p> <p>19 A. From this transcript it looks</p> <p>20 that way. I don't know how the two</p> <p>21 would have interacted.</p> <p>22 Q. And did anyone else, to your</p> <p>23 knowledge -- sorry.</p> <p>24 To your knowledge, did anyone</p> <p>25 else at EFFEX have access to the FXCM</p>